

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JIMMY QUINTON GREEN,

Petitioner,

v.

C. HOLINKA (Warden),

Respondent.

ORDER

08-cv-466-slc

This petition for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2241 was dismissed on September 15, 2008 for lack of jurisdiction. Specifically, I found that because petitioner is challenging the validity of his conviction and sentence in the District Court for the Eastern District of Michigan, this court lacks jurisdiction to entertain his claims under § 2241. I reviewed the 28 U.S.C. § 2255 motion he had filed in the sentencing court and concluded that it was not in the interests of justice to transfer his § 2241 motion to the Eastern District of Michigan. Although petitioner titled the motion he filed in this case as a § 2241 motion, it is actually a second 28 U.S.C. § 2255 motion that would have to be dismissed promptly by the court in the Eastern District of Michigan for lack of jurisdiction for petitioner's failure to obtain permission for filing it from the Court of Appeals for the

Sixth Circuit. 28 U.S.C. § 2255(h).

Now petitioner has filed a notice of appeal. Because he has not paid the \$455.00 filing fee for his appeal, I will construe petitioner's notice of appeal as a request for leave to proceed in forma pauperis on appeal. The request will be denied because I must certify that petitioner's appeal is not taken in good faith. 28 U.S.C. § 1915(a)(3).

Petitioner does not assert that this court erred in interpreting the allegations of his petition as challenging the validity of his conviction. In fact he does not assert any grounds for appealing my decision. Although I understand petitioner's frustration at being jurisdictionally barred from raising his challenges here, particularly in view of the fact that he already has been unsuccessful in obtaining a favorable ruling on his § 2255 motion in the sentencing court, there is no legal merit to the claim he wishes to raise on appeal. Therefore, his request for leave to proceed in forma pauperis on appeal will be denied.

If petitioner intends to challenge this court's certification that his appeal is not taken in good faith, he has 30 days from the date he receives this order in which to file with the Court of Appeals for the Seventh Circuit a motion for leave to proceed in forma pauperis on appeal. His motion must be accompanied by a copy of the affidavit prescribed in the first paragraph of Fed. R. App. P. 24(a) and a copy of this order.

ORDER

IT IS ORDERED that petitioner's request for leave to proceed in forma pauperis on appeal is DENIED and I certify that petitioner's appeal is not taken in good faith.

Entered this 24th day of September, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge